# MSAPC ADVISORY CIRCULAR

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE Of AIR AND WASTE MANAGEMENT ● MOBILE SOURCE AIR POLLUTION CONTROL

A/C NO. 64 March 7, 1977 PAGE 1 OF 3 PAGES

SUBJECT: Certificates of Conformity for Certified Vehicles Modified Subsequent to Original Manufacture

A. Purpose

The purpose of this advisory circular is to provide guidance regarding the need for separate certification of certified new motor vehicles which are modified subsequent to original manufacture but prior to sale and delivery to the ultimate purchaser.

B. Background

Section 203(a)(1) of the Clean Air Act prohibits the introduction into commerce by a manufacturer of any new motor vehicle that is not covered by a certificate of conformity issued under the authority of Section 206(a). The question has arisen as to whether a person who modifies a certified vehicle becomes, by the very act of making a modification, a manufacturer who must then obtain a new Certificate of Conformity prior to the sale of the vehicle to the ultimate purchaser.

C. Applicability

This advisory circular is applicable to 1976 and later model year light-duty vehicles and light-duty trucks.

D. Discussion

1. A variety of modifications are frequently made to certified vehicles to adapt such vehicles to specialized uses. Examples of such modifications include the addition of extra gas tanks, four-wheel drive, winches, tool chests, sun roofs, etc. In almost all of such cases the modifications add weight to the vehicle; in some cases the modifications alter components that can directly affect the emissions performance of the vehicle. This advisory circular is being issued to clarify the Agency's policy regarding this practice.

2. Persons who modify new vehicles prior to initial sale are subject to some of the Clean Air Act's prohibitions. If "any person" renders inoperative "a device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations...." prior to sale and delivery to the ultimate purchaser, that person violates Section 203(a)(3). An increase in vehicle weight may place the vehicle in a heavier inertia weight class. Testing at a heavier inertia weight will, in most cases, result in higher emission levels. Thus a modifier of new vehicles who adds sufficient weight to cause the vehicle to exceed the standards may be deemed to have rendered inoperative relevant devices or elements of design. More detail on EPA's policy regarding Section 203(a)(3) is set forth in Mobile Source Enforcement Memorandum No. 1A (excerpts attached).

E. Policy

1. A person, other than the original manufacturer 1/, who modifies a new motor vehicle before sale of the vehicle to the ultimate purchaser will not be deemed to be a manufacturer, within the meaning of Section 203(a)(l) of the Clean Air Act, and thus not required to obtain a Certificate of Conformity for the modified new motor vehicle, if the modification adds no more than 500 pounds to the vehicle weight and does not remove the modified vehicle from inclusion in the engine-system combination (1976 and 1977 model year vehicles) or engine-system, evaporative emission family, evaporative emission control system combination (1978 and later model year vehicles) 2/, in which the original vehicle was certified.

2. The attached excerpts from Mobile Source Enforcement Memorandum No. 1A indicate that emission testing of the modified vehicle may be necessary to assure the modifier that his modification does not cause the vehicle to fail to comply with applicable emission standards for purposes of §203(a)(3). The conduct of, or arranging for, such emission testing is the responsibility of the modifier, at his own expense. The EPA does not provide testing services for this purpose.

F. Advisory Opinions

A modifier of new vehicles who adds more than 500 pounds to the vehicle weight or who may not be clear as to whether his modification would alter the engine-system combination may request from the Director, Division of Certification, 2565 Plymouth Road, Ann Arbor, Michigan, 48105, an advisory opinion as to whether

a specific modification would place the modifier in a position of being considered a manufacturer within the meaning of the Clean Air Act, and thus subject to the provisions of Section 203(a)(l) that require issuance of a Certificate of Conformity prior to marketing the modified new vehicles.

Eric 0. Stork
Deputy Assistant Administrator
for Mobile Source Air Pollution Control

1/ The term "original manufacturer" is used here to mean the manufacturer who holds the Certificate of Conformity for the vehicle being modified.

2/ The term "engine-system combination" is defined for 1976 and 1977 model year new light-duty vehicles and light-duty trucks in 40 CPR 86.077-2 as follows: " 'Engine-system combination' means an engine family-exhaust emission control system-fuel evaporative emission control system (where applicable) combination." Mobile Source Air Pollution Control Advisory Circulars No. 20-R. June 27; 1974, and No. 59, August 31, 1976, define and expand upon the terms "engine family," "exhaust emission control system," and "fuel evaporative emission control system."

The term "Engine-system combination" is defined for 1978 and later model year new light-duty vehicles and light-duty trucks in 40 CFR 86.078-2 as follows: " 'Engine-system combination' means an engine family-exhaust emission control system combination." Since the evaporative emission control system is not a determinant of the engine-system combination in this definition, it is necessary to add "evaporative emission family evaporative emission control system" to the specification of vehicle configuration for 1978 and later model year light-duty vehicles and light-duty trucks. The terms "evaporative emission family" and "evaporative emission control system" are characterized in Mobile Source Air Pollution Control Advisory Circular No. 59, dated August 31, 1976.

Attachment

Excerpts from Mobile Source Enforcement Memorandum No. 1A*

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B. Interim Policy

1. Unless and until otherwise stated, the Environmental Protection Agency will not regard the following acts, when performed by a dealer, to constitute violations of Section 203(a)(3) of the Act:

* * *

(b) Use of a **nonoriginal** equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system, if the dealer has a reasonable basis for knowing that such use will not adversely affect emissions performance; and

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3. For purposes of clauses (lb) and (lc) a reasonable basis for knowing that a given act will not adversely affect emissions performance exists if:

(a) the dealer knows of emissions tests which have been performed according to testing procedures prescribed in 40 **CFR** 85 showing that the act does not cause similar vehicles or engines to fail to meet applicable emission standards for their useful lives (5 years or 50,000 miles in the case of light-duty vehicles); or

**(b)** the part or system manufacturer represents in writing that tests as described in (a) have been performed with similar results; or

**(c)** a Federal, State or local environmental control agency **expressly represents** that a reasonable basis exists. (This provision is limited to the geographic area over which the State or local agency has jurisdiction.)

C. Discussion

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2. Clause (lb) will protect the dealer who installs add-on parts if he knows, or if it has been represented in writing to him by the part manufacturer, that emissions tests have been performed according to Federal procedures which show that such a part will not cause similar vehicles to fail to meet applicable emission standards over the useful life of the vehicle. The dealer is protected from prosecution even if the test results have not been reported to EPA. However, the aftermarket parts manufacturer who represents that such tests have been

conducted should have available the data from the tests, including where, when, how and by whom the tests were conducted, should EPA request it. Such add-on parts might be auxiliary fuel tanks, which would require evaporative emission control on light-duty vehicles to the prescribed standard, or superchargers, which would require emission testing showing conformance to standards over the useful life of the vehicle or engine. Clause! (lb) will also protect the dealer who installs retrofit devices to reduce emissions at the request of a State or local environmental control agency.

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* A copy of Mobile Source Enforcement Memorandum No. 1A, dated June 25, 1974, is available on request from the Director, Mobile Source Enforcement Division, EPA, Washington, D.C. 20460.

* U.S. GOVERNMENT PRINTING OFFICE: 1980- 651-112/0177